IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4550 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
SONI SACHINKUMAR NAVINCHANDRA AND OTHERS

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Appearance :
MR DIPEN DESAI, APP for Applicant.
MR YN RAVANI for Respondent Nos.1 - 3.
MR YOGESH S LAKHANI for Respondent No.4.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 24/10/2007

ORAL JUDGMENT

1. Even though the present petition by the State for cancellation of bail is requested to be disposed as not pressed, an elaborate order requires to be made in view of serious abuse of process of the Court at the instance of the State or the investigation officer in the criminal case

alleging non bailable, cognizable offences involving crores of rupees.

2. The backdrop of relevant facts is that an FIR came to be lodged and registered as Ist C.R.No.3/2007 on 19-1-2007 in L.C.B. Police Station, Patan. It was, in substance, alleged that eight accused persons named in the FIR had committed offences punishable under Sections 406, 420, 506 (1) and 114 of the Indian Penal Code by taking away goods worth crores of rupees and not paying the price but threatening the complainant. Even as permanent addresses of the accused persons were found and available to the investigating officer, three persons out of the list of accused persons were immediately arrested and when they were ordered to be released on bail by the impugned order, present petition was filed two months thereafter for cancellation of bail. The petition was admitted on 26-4-2007 and Rule was made returnable on 10th May 2007, but, Rule not having been received back, fresh notices of Rule were ordered to be issued on 10-5-2007 making them returnable on 14th June 2007. Since fresh notices of Rule returnable on 29-8-2007 were again ordered to be issued and learned Public Prosecutor was requested to collect the packet of notice and serve them upon the respondents in time, after appearance of the respondents following order was made on 5-9-2007.

> **"1.** Learned A.P.P. Mr.Dipen Desai and learned counsel Mr.Y.N.Ravani submitted that, by now, the parties concerned in the original complaint and the criminal case have entered into a settlement and, therefore, the present application for cancellation of bail may not survive, although admittedly the offences alleged against the accused persons are non-bailable, cognizable and non-compoundable. It was further submitted by learned counsel

Mr.Ravani that, since the parties had settled their dispute, the investigating officer may be requested to file appropriate summary to end the criminal proceedings.

"2. Learned A.P.P. submitted that the investigating officer had instructed him not to press the present application in view of the settlement. It was also conceded, on instructions, that the main accused persons, who were never arrested, had signed the so-called deed of settlement and that they were all throughout since the date of registration of offence on 19.01.2007 never arrested. He could not explain as to why the so-called main accused persons could not be arrested despite their permanent addresses and availability even for the complainant for the purpose of negotiating and signing the settlement. It, *prima facie*, shows involvement of the investigating officer with the accused persons and abuse of the process of court through the office of learned Public Prosecutor, which impression is further buttressed by the fact that, even after issuance of Rule on 26.4.2007 in the present petition, it was not served till 08.08.2007 and, immediately thereafter, the deed of settlement has come on record. Learned A.P.P. proposes to file affidavit-in-reply of the investigating officer to explain the above circumstances and to assist the court in making appropriate orders. In the above circumstances, it was found to be necessary that original complainant should be joined as a party-respondent and heard. Therefore, petitioner is permitted to amend the cause-title of petition so as to add the original complainant as party-respondent. That shall be

done by tomorrow and, upon joining of that party, notice of **RULE** returnable on **17.09.2007** shall be issued and given to the office of Public Prosecutor for direct service. S.O. to **17.09.2007**."

3. Since it was stated at the bar that the main accused persons were never arrested, even as they were pursuing other proceedings in this Court, the papers of those cases being Criminal Misc. Application No.1838/2007 and 1444/2007 were called for perusal. It has transpired that Criminal Misc. Application No.1444/2007 was filed by six out of eight accused persons, including three respondents herein, for the relief of quashing the FIR registered as I-C.R.No.3/2007 and by order dated 13-2-2007 further proceeding on that FIR was stayed by way of ad-interim relief. That order continued to operate till 9-7-2007, when the petition was dismissed as withdrawn, after recording that talks of settlement were going on among the parties. Another Criminal Misc. Application No.1838/2007 was filed by the two other accused persons, who, by their role in commission of the alleged offence were named as main accused persons. That petition was also made under Section 482 of the Code of Criminal Procedure, 1973 for quashing the aforesaid FIR and stay of further proceedings pursuant to it. In that petition also, by virtue of first order dated 21-2-2007, ad-interim relief was granted to stay further proceeding and it continued to operate till 9-7-2007, when the petition was dismissed as withdrawn by similar order. In either of the petition, no affidavit-in-reply was filed by any of the respondents including the State Government.

4. By filing an affidavit in the present proceeding, the investigation officer has, inter alia, stated that wireless messages were sent on 20th January 2007 to all the police stations as well as Economic Cell and

Special Operation Group and to Dy.S.P., Radhanpur as well as Dy.S.P. Siddhpur, that on receiving any information regarding the main accused persons, Police Officer, Harij Police Station should be informed immediately. However, accused no.1 and 2 could not be found and even upon enquiry from the co-accused persons, who are their family members, their whereabouts could not be found out. Thereafter, vide order dated 13-2-2007 in Criminal Misc. Application No.1444/2007 and order dated 21-2-2007 in Criminal Misc. Application No.1838/2007 further proceedings were stayed. Therefore, further investigation could not be undertaken and no steps could be taken to arrest or to trace accused no.1 and 2 till 9-7-2007 when the stay orders were vacated upon withdrawal of the quashing petitions. It is further stated :

> "10. It is submitted that the petitioners came to be know about the said order only on 26.07.2007. Thereafter, further investigation was carried out and steps to locate accused no.1 and 2 came to be undertaken. At this juncture it would be relevant to state that the deponent herein was transferred to L.C.B., on 08.08.2007 and was entrusted with the present case. Thereafter, the investigation was carried further by the deponent."

4.1 After stating that those accused persons could not be found either at the place of residence or the office, it is averred that :

> "11. ..... Therefore, investigating authority has taken various steps to apprehend the accused persons however, in spite of the best efforts of the investigating authority, accused persons have not been arrested. However, the efforts to arrest the accused persons and still going on and

the deponent assures that best efforts and being undertaken by the officers."

The above statements were made on oath on 11th September 2007 after order dated 5-9-2007 herein, which is quoted herein above.

5. The chronology of events that emerge from above record would show that, after registering FIR on 19-1-2007, the respondents herein were arrested on the same day, whereas main accused persons were not found and arrested till 11th September 2007, even after aforesaid order dated 5-9-2007, and even as they were pursuing the petition for quashing in this Court and even negotiating and entering into settlement of dispute with the original complainant and the settlement was actually signed on 25-8-2007. A copy of the settlement, placed on record with the affidavit-in-reply, shows that it was signed at Harij itself and it was signed by no less than 19 persons. It was stated by learned APP, on instructions of the Investigating Officer, that ultimately the main accused persons were arrested on 14-9-2007 and released on bail on 18-9-2007. Thus, it is clear from the record that so-called main accused persons could avoid arrest for as long as eight months, while the other co-accused persons who were immediately arrested and who were released on bail mainly on the ground of the *prima facie* view that they were not directly involved in the offence but implicated only as members of the family were dragged to this Court.

6. The above facts lead to the inescapable conclusion that the investigating officer was, either at the instance of the original complainant or in order to protect the main accused persons, abusing the process of law by persecuting the persons who were not directly connected with the offence and not arresting the persons who were

allthroughout alleged to be the main accused persons. Ordinarily an investigation officer would be expected to carry out and complete the investigation and submit his report within a reasonable time. That does not appear to have been done in the facts of the present case. Instead, the investigating officer appears to have facilitated hide and seek for the accused persons, while even process in the present proceeding were not served in time till an express order in that regard was made and the investigating officer was directed to remain personally present on 29-8-2007. Four days before that date, complainant and the main accused persons had entered into a settlement and the present petition was then sought to be withdrawn on that basis. Thus all the three proceedings before this Court appear to have facilitated inaction on the part of investigating agency and leeway for the main accused persons, who were alleged to have committed breach of trust in respect of an amount exceeding Rs.5 Crores, which was alleged to be due from them. Such approach and attitude of the investigating agency clearly appear to be perverse, motivated and dilatory, in the facts of present case.

These observations were required to be recorded for the authorities concerned to make suitable amends for ensuring that the investigating officers do not transgress their limits and collude either with the complainant or the accused persons, rather than undertaking their task of submitting the investigation report in time. In the facts of the present case, *prima facie,* not only the remotely connected or wrongly implicated accused persons appear to have been unnecessarily harassed and dragged to this Court but the State machinery, office of the Public Prosecutor and process of this Court also appear to have been abused with an ulterior motive. With the above observations, the petition is dismissed and Rule is discharged with cost of Rs.15,000/- which shall be equally distributed among respondent no.1 to 3. It will be open for the

State Government to recover the amount paid by it by way of cost, if thought fit, from such of its officers who may be found to be responsible for the aforesaid state of affairs.

(D.H.Waghela, J.)

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